3139.

SUPREME COURT OF THE UNITED STATES.

No. 190.

AARON B. COOLEY, PLAINTIFF IN ERROR,

vs.

THE BOARD OF WARDENS OF THE PORT OF PHILADELPHIA, TO THE USE OF THE SOCIETY FOR THE RELIEF OF DISTRESSED PILOTS, WIDOWS, AND THEIR CHILDREN.

IN ERROR TO SUPREME COURT OF PENNSYLVANIA, FOR THE EASTERN DISTRICT.

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[GIDEON, Print.]

Pleas before the Hon. John Bannister Gibson, LL. D., chief justice of the supreme court of Pennsylvania, and his associate justices of the same court, at a supreme court in and for the eastern district, at Philadelphia, of December term, 1847, No. 66, viz., it is thus contained:

Transcript from the docket of Alderman Smith.

THE BOARD OF GUARDIANS of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows, and children,
vs.
A. B. COOLEY.

Costs . . $1 12½
Appeal . . 50

Summons issued February 1, 1847; returnable 8th, at 5 p. m.; returned, served personally, February 1, 1847; February 8, 1847, plaintiffs' counsel and defendant appear; case continued at defendant's request to 15th instant, at 5 p. m.; and now, February 15, 1847, parties appear as before.

Plaintiffs' claim is under the act of 29th March, 1803, section 29, to recover from defendant, as consignee of the schooner Consul, the sum of $15 75, being the amount of half pilotage due by said schooner, in consequence of the refusal of the master of said schooner to take a pilot on the outward voyage in December last.

Benjamin Holbrook and F. N. Baggs sworn for plaintiffs; after hearing, judgment for plaintiff for $15 75.

March 5, 1847, defendant appeals.

I become bail for defendant in $50, conditioned that he prosecute an appeal according to law. March 5, 1847.

Signed, JAMES R. WEBB,
S. W. corner of Dock and 2d streets.

CITY OF PHILADELPHIA, *ss.*

I certify that the above is a true transcript from my docket.
Witness my hand and seal, March 5, 1847.

THOMAS D. SMITH, [SEAL.]
Alderman.

THE BOARD OF WARDENS, &c.,
vs.
A. B. COOLEY.
No. 32.

In common pleas, &c., of June term, 1847.

The defendant above named being duly sworn, according to law, says, that the appeal in this case is not intended for delay, but because

he verily believes that he has a good and legal defence to this action. He further says, that he is not indebted to the plaintiffs in any sum whatever.

A. B. COOLEY.

Sworn to and subscribed, on this tenth day of June, A. D. 1847, before me, CHAUNCEY BULKLEY,
Alderman.

Affidavit of defence filed June 10, 1847.

THE BOARD OF THE GUARDIANS of the port, &c., vs. A. B. COOLEY. } No. 32.

In common pleas, June term, 1847.

Enter rule upon the plaintiffs to declare in eight days, or judgment sec. reg.

J. R. TYSON, *for defendant.*

To PROTHONOTARY, *Common Pleas.*
July 20, 1847.

Rule to declare, &c., filed July 20, 1847.

THE BOARD OF GUARDIANS vs. A. B. COOLEY. }

In C. C. pleas, June T., 1847, No. 32.

Enter rule to declare in 8 days, or judgment sec. reg.
To Proth'y c. pleas.

MORRIS, *for Defd't.*

September 7th, 1847.
Rule to declare filed September 7, 1847.

In the court of common pleas of Philadelphia county, of June term, 1847, No.

PHILADELPHIA COUNTY, *ss.*

The board of wardens for the port of Philadelphia, who sue to the use of the society for the relief of distressed and decayed pilots, their widows and children, by St. George T. Campbell, their attorney, complain of A. B. Cooley, who has been summoned to answer the plaintiffs, who sue as aforesaid in an action of debt, and the plaintiffs demand of the defendant that he render to them to the use aforesaid a large sum of money, to wit, the sum of seven dollars eighty-seven and a half cents, which he owes to and unjustly detains from them.

For that whereas heretofore, to wit, on the twenty-third day of December, A. D. 1846, the defendant was the consignee of a certain schooner of more than seventy-five tons burthen, then named the Consul, of which one Bolles was then the master.

And whereas the said schooner, on the day and year last aforesaid,

and while the defendant was the consignee, and the said Bolles the master thereof as aforesaid, sailed, without being towed by steam, from the port of Philadelphia to a certain port not within the river Delaware, the said schooner then and there drawing seven feet of water; and the plaintiffs aver, that although a pilot could have been obtained by the said master within twenty-four hours after said schooner was ready to depart from the said port as aforesaid, yet the said master of the said schooner neglected to take a pilot for said schooner from said port, contrary to the act of the general assembly in such case made and provided, whereby and by force of the said statute, an action hath accrued to the plaintiffs to demand and have of and from the said defendant, as consignee as aforesaid, the sum of seven dollars eighty-seven and a half cents, being a sum equal to the half of the pilotage of said schooner. Yet the said defendant hath not paid the same, or any part thereof, to the plaintiffs' damage of fifty dollars; and therefore they bring suit, &c.

J. F. JOHNSTON,
For ST. GEO. T. CAMPBELL.

Narr. filed September 8, 1847.

Enter rule to plead in 8 days, or judgment sec. reg.

ST. GEO. T. CAMPBELL.

In the court of common pleas, for the city and county of Philadelphia, of September term, 1847, No. 32.

THE BOARD OF WARDENS
vs.
COOLEY.

And the said defendant, by P. P. Morris and J. R. Tyson, his attorneys, comes and defends the wrong and injury when, &c., and says that the said declaration, and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant; and that he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore by reason of the insufficiency of the said declaration in this behalf the said defendant prays judgment; and that the said plaintiff may be barred from having or maintaining their aforesaid action thereof against him, &c.

MORRIS, *for Defendant.*

Demurrer filed September 11, 1847.

In the court of common pleas, Philadelphia county, of June term, 1847, No. 32.

PHILADELPHIA COUNTY, *ss.*

And the said defendant, by P. P. Morris and J. R. Tyson, his attorneys, comes and defends the wrong and injury, when, &c., and says

that the said plaintiffs ought not to have or maintain his aforesaid action thereof against the said defendant, because he says that the said schooner the Consul at the time set forth in the said declaration was engaged in the coasting trade, and sailing under a license duly granted by the United States under the acts of Congress in such case made and provided, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

MORRIS,
TYSON, *for Defend't.*

Pleas filed October 14, 1847.

In the court of common pleas, Philadelphia county, June T., 1847, No. 32.

PHILADELPHIA COUNTY, *ss.*

And the said defendant, by P. P. Morris and J. R. Tyson, his attorneys, for a further plea in this behalf, with the leave of the court, &c., says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendant, because, he says, that the said schooner, the Consul, at the time set forth in the said declaration, was bound on a voyage from the port of Philadelphia, in the State of Pennsylvania, to the port of New York, in the State of New York; and this the said defendant is ready to verify; wherefore he prays judgment, &c.

MORRIS, *for def't.*

(Endorsement.)

No. 32. June, 1847.

BOARD OF WARDENS vs. COOLEY. } C. pleas.

Second plea.

Filed October 14, 1847.

BOARD OF WARDENS, to use, &c., vs. COOLEY.

C. P., June T., '47, No. 32.

The plaintiff saith that the said pleas of the said defendant here above pleaded are not sufficient in law; wherefore he prays judgment, &c.

J. F. JOHNSON,
Pro ST. GEO. T. CAMPBELL.

Defendant joins in demurrer.

MORRIS, *for defendant.*

Demurrer filed October 14, 1847.

Court of common pleas, Philadelphia county, June term, 1847, No. 32.

THE BOARD OF WARDENS of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children,	32	ST. G. T. CAMPBELL.
vs.		J. R. TYSON,
A. B. COOLEY.		P. P. MORRIS.

Appeal by defendant from the judgment of Ald. Smith obtained February 15, 1847, for $15 75; costs, $1 12½. March 5, 1847, James R. Webb sent in $50.

June 10, 1847, aff. of def. filed.
July 20, 1847, rule to declare filed. } Filed March 5, 1847.
Sept. 7, 1847, rule to declare filed.

Sept. 8, 1847, narr. filed; Sept. 11, 1847, demurrer filed; Sept. 14, 1847, rule to show cause why narr. should not be amended; Sept. 18, 1847, rule absolute; October 14, 1847, second plea filed; October 14, 1847, plea filed; Oct. 14, 1847, demurrer filed; Nov. 27, 1847, writ of error brought into office; Nov. 22, 1847, judgment for plaintiff on demurrer.

Certified from the record.

P. S. BROWN,
Pro prothonotary.

EASTERN DISTRICT, *Pennsylvania, sct.*

The Commonwealth of Pennsylvania, to the justices of the court of common pleas for the county of Philadelphia, greeting:

[SEAL.] Because in the record and process, and in rendering the judgment in a certain plaint, which was in our court, before the judges of the same court, by our writ, between A. B. Cooley, plaintiff in error, and the board of wardens of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children, defendants in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by the complaint of the same plaintiff in error we have received information: We, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you that, if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Philadelphia, in and for the eastern district of said commonwealth, on the second Monday of December next, and this writ; that, the record and process aforesaid being inspected, we may further cause to be done what of right, and according to our laws and customs, ought.

Witness the honorable John Bannister Gibson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-seven, and of the commonwealth the seventy-second.

A. M. COHEN,
For J. S. COHEN,
Prothonotary.

Allowed by—
MOLTON C. ROGER.

(*Endorsement on writs of error.*)

66. December term, 1847. Supreme court.

A. B. Cooley, plaintiff in error, vs. the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed and decayed pilots, their widows and children, defendants in error.

(I. 47, No. 32.)

Writ of error to the court of common pleas for the county of Philadelphia, returnable the second Monday of December, 1847.

P. P. MORRIS,
J. R. TYSON.

Nov. 27, 1847. Bro't into office.

To the honorable the judges within named.

The record and proceedings, and all things touching the same, we send, as within we are commanded.

So answers—

EDW'D KING,
JAMES CAMPBELL.

In supreme court, E. D. P., Dec. term, 1847, No. 67.

A. B. COOLEY
vs.
THE BOARD OF WARDENS, &c.

Assignment of errors.

The court erred in entering judgment on the demurrer for the plaintiff below.

P. P. MORRIS,
J. R. TYSON,
For plaintiff in error.

Nov. 30, 1847.

Assignment of errors, filed November 30th, 1847.

And now, January 31st, 1850, the said cause came on to be heard before the honorable John Bannister Gibson, chief justice, and the honorable Molton C. Rogers, Thomas Burnside, Richard Coulter, and Thomas S. Bell, justices, and after due consideration it was ordered by the court that "the judgment of the court of common pleas for the city and county of Philadelphia be affirmed, because this court is of opinion that the twenty-ninth section of the act of the State of Pennsylvania of

the twenty-ninth March, A. D. 1803, entitled "An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned," is not, in any of its provisions involved in this cause, at variance with any of the provisions of the Constitution or laws of the United States, but is a constitutional and legal enactment.

I certify the foregoing to be a true, full, and accurate copy of the whole record in the above case.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court, at Philadelphia, this thirteenth day of June, A. D. 1850.

[SEAL.]

J. SIMON COHEN, *Prothonotary.*

The United States of America, to the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Pennsylvania, for the eastern district, wherein Aaron B. Cooley is plaintiff in error and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert C. Grier, an associate justice of the Supreme Court of the United States, this twelfth day of February, in the year of our Lord one thousand eight hundred and fifty.

R. C. GRIER.

On this thirteenth day of June, in the year of our Lord one thousand eight hundred and fifty, personally appeared Jacob Nullet before me, the subscriber, clerk of the circuit court of the United States, for the eastern district of Pennsylvania, and makes oath that he delivered a true copy of the within citation to Harman Yerkes, master warden at the office of the Board of Wardens of the port of Philadelphia, on the twenty-third day of February, A. D. 1850.

GEORGE PLITT, *Clerk, C. C.*

Know all men by these presents, that we, Aaron B. Cooley and Thompson Black, of the city of Philadelphia, are held and firmly bound unto the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, in the full and just sum of five hundred dollars, to be paid to the said the Board of Wardens of the port of Philadelphia, to the use aforesaid, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this ninth day of February, in the year of our Lord one thousand eight hundred and fifty.

Whereas lately, in the supreme court of the Commonwealth of Pennsylvania, in a suit depending in said court, between Aaron B. Cooley, plaintiff in error, and the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, defendants in error, as of December term, 1847, No. 66, a judgment was rendered against the said plaintiff in error; and the said plaintiff in error having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants in error, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiff in error shall prosecute the writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

AARON B. COOLEY, [SEAL.]
THOMPSON BLACK. [SEAL.]

Sealed and delivered in presence of— [SEAL.]
GEORGE PLITT,
P. P. MORRIS.

R. C. GRIER,
Asso. Just. S. C. U. S.
Approved by MOLTON C. ROGERS,
Associate justice of the Supreme Court.

On the ninth day of February, A. D. 1850, before me, George Plitt, came the within named Aaron B. Cooley and Thompson Black, who being severally affirmed, did depose and say, that they were householders in the city of Philadelphia, and worth each of them over five hundred dollars beyond all their debts and liabilities.

GEORGE PLITT, *U. S. Com'r.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the [SEAL.] supreme court of Pennsylvania, for the eastern district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Aaron B. Cooley, plaintiff in error, and the Board of Wardens of the port of Philadelphia, to the use of the society for the relief of distressed pilots, their widows and children, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decis-